

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF  
THE TTAB

Mailed: December 30, 2004  
PTH

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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H-D Michigan, Inc.  
v.  
Boutique Unisex El Baraka, Inc. and 3222381 Canada, Inc.,  
joined as a party defendant

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Opposition No. 91108265 and  
Cancellation Nos. 92027073 and 92029665

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Kristin L. Murphy and Michael A. Lisi of Rader, Fishman &  
Grauer PLLC and Linda K. McLeod and David M. Kelly of  
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.  
for H-D Michigan, Inc.

Janet F. Satterthwaite of Venable, LLP for Boutique Unisex  
El Baraka, Inc. and 3222381 Canada, Inc.

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**Motion for Reconsideration**

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Before Simms, Hairston and Walters, Administrative Trademark  
Judges.

Opinion by Hairston, Administrative Trademark Judge:

The Board, in a decision issued September 30, 2004,  
sustained the opposition to defendant's application to  
register the mark SCREAMIN EAGLE for jewelry, posters, beer  
mugs, and clothing and accessories. Further, the Board

granted the petitions to cancel the registrations of the mark SCREAMING EAGLE for coffee mugs, belt buckles, brooches and clothing and accessories.

In particular, the Board found that plaintiff had prior common law use of the mark HARLEY-DAVIDSON SCREAMIN' EAGLE PERFORMANCE PARTS and design for pins, belt buckles, baseball caps, lighters and emblems/patches. Further, the Board found that defendant's use of the mark SCREAMIN EAGLE for its identified goods was likely to cause confusion with plaintiff's previously used mark HARLEY-DAVIDSON SCREAMIN' EAGLE PERFORMANCE PARTS and design for its identified goods.

Defendant has filed a timely motion for reconsideration. Defendant maintains that the Board erred in finding that plaintiff has priority and dismissed defendant's argument that the marks are not similar. Also, defendant contends that the Board "disregarded [defendant's] argument about the import of third-party use of SCREAMIN' EAGLE across a variety of goods." (Reconsideration Motion, pp. 5-6).

With respect to defendant's contention that the Board erred in finding that plaintiff has priority, defendant is essentially requesting that the Board reweigh the evidence on this issue. The basis for the Board's finding on this issue is clearly articulated in the decision and we do not find any error in reaching that finding.

Further, contrary to defendant's contention, the Board did not simply "dismiss" defendant's argument that the marks are not similar. Rather, the Board clearly articulated the reasons for our finding that the marks are similar. (Decision, pp. 23-24).

Finally, contrary to defendant's contention, the Board did not disregard defendant's argument concerning third-party registrations and third-party uses of SCREAMIN' EAGLE. The Board pointed out that third-party registrations are of limited probative value in determining likelihood of confusion because they are not evidence of actual use of the marks in commerce. (Decision, pp. 27-28). Also, the Board pointed out that the third-party uses were entitled to little weight because they are for unrelated goods and services. (Decision, p. 28). As noted by our primary reviewing court:

The relevant duPont inquiry is "[t]he number and nature of similar marks in use on similar goods." (citation omitted)

Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992).

In sum, we remain convinced that the record establishes plaintiff's priority, that the marks are similar, and that plaintiff's mark is not weak. Defendant's motion for reconsideration is accordingly denied.